

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____)	
Conservation Law Foundation, Inc.)	
)	Case No. 1:12-CV-10771-MLW
Plaintiff,)	
)	
v.)	[Proposed] Consent Decree
)	
Old Colony Scrap Inc.)	
)	
Defendant.)	
_____)	

WHEREAS, Plaintiff Conservation Law Foundation, Inc. ("CLF") filed this action on April 30, 2012, against Defendant Old Colony Scrap Inc. ("Old Colony Scrap"), alleging violations of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, and seeking declaratory and injunctive relief, civil penalties, and attorneys fees and costs;

WHEREAS, Old Colony Scrap owns and operates an scrap metal recycling facility located at 22 Fifth Street and 655 West Water Street, Taunton, MA 02780 (the "Facility");

WHEREAS, CLF has alleged that the Facility discharges stormwater associated with industrial activity to waters of the United States;

WHEREAS, Old Colony Scrap has not applied for a stormwater permit for the Facility;

WHEREAS, CLF is a regional, nonprofit environmental organization;

WHEREAS, CLF has alleged in its complaint (the "Complaint") and in a letter (the "Notice Letter") dated February 28, 2012, sent to Old Colony Scrap and others, that Old Colony Scrap has violated and continues to violate Section 505 of the Federal Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1365(a); and

WHEREAS, CLF and Old Colony Scrap (collectively, "the Parties" or individually "Party") agree that resolution of this matter without further litigation is in the best interest of the Parties and the public, and that entry of this Decree is the most appropriate means of resolving this action.

NOW, THEREFORE, without the trial of any issue of fact or law, without the admission by Old Colony Scrap of any of the facts or violations alleged in the Complaint, upon consent of the Parties, and upon consideration of the mutual promises contained herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. Jurisdiction over this action is conferred by 28 U.S.C. § 1331 (federal question) and 33 U.S.C. § 1365(a) (Clean Water Act jurisdiction). An actual, justiciable controversy exists between Plaintiff and Defendant. The requested relief is proper under 28 U.S.C. § 2201, 28 U.S.C. § 2202 and 33 U.S.C. § 1365(a).

2. Venue is properly vested in this Court pursuant to 33 U.S.C. § 1365(c)(1), because the events giving rise to this action occurred at the Old Colony Scrap facility, located at 22 Fifth Street and 655 West Water Street, Taunton, MA 02780, and in the Narragansett watershed, which are located within this judicial district.

II. COMPLIANCE PROGRAM

3. Old Colony Scrap will develop a written Stormwater Pollution Prevention Plan ("SWPPP") according to the requirements in Parts 5 and 8.M.3 of the most recent United States Environmental Protection Agency ("EPA") National Pollutant Discharge Elimination System ("NPDES") Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity ("MSGP"), by no later than November 16, 2015. The most recent MSGP as of the date of the Parties' signatures below is the 2015 MSGP, which took effect on June 4 2015. The MSGP, as it may be updated from time to time, is incorporated into this Consent Decree by reference. Development of the SWPPP shall include, at minimum, the following steps:

- a. Formation of a pollution prevention team of qualified personnel who will be responsible for preparing the plan and assisting the plant manager in implementing practices to comply with the MSGP;
- b. Assessment of potential stormwater pollution sources;
- c. Selection of appropriate control measures that minimize the discharge of pollutants during storm events for each of these sources; and
- d. Development of procedures for conducting required inspection and monitoring activities, as well as regular maintenance of control measures.

4. Old Colony Scrap shall provide a copy of its SWPPP to CLF for review and comment by no later than November 16, 2015. CLF shall respond with comments within twenty-one (21) days of receipt. Within fourteen (14) days of receiving CLF's comments, if any, Old Colony Scrap shall submit a final SWPPP to CLF, incorporating CLF's comments, or justifying in writing why any comment is not being incorporated.

5. Old Colony Scrap will select, design, install, and implement control measures, in accordance with Part 2.1 of the MSGP, to meet numeric and non-numeric effluent limits.

6. Old Colony Scrap will design, install, and implement control measures that include, at minimum, the following categories of site-specific best management practices (“BMPs”):

- a. Good housekeeping practices;
- b. Minimizing exposure of potential pollutant sources to precipitation;
- c. Erosion and sediment control; and
- d. Management of runoff.

7. Old Colony Scrap will design, install, and implement control measures that include, but are not limited to:

- a. The site-specific BMPs listed in Part 8.N the MSGP; and
- b. The “BMPs for Potential Pollutant Sources at Scrap Recycling and Waste Recycling Facilities” listed in Table 2 of the EPA *Industrial Fact Sheet Series for Activities Covered by EPA’s MSGP (Sector N: Scrap Recycling and Waste Recycling Facilities)*, available at:
http://www.epa.gov/npdes/pubs/sector_n_scraprecycling.pdf

8. Wherever feasible, Old Colony Scrap will design, install, and implement control measures that employ a low-impact development (LID) approach. LID is a natural-resource-based alternative approach to site design that incorporates a variety of structural and non-structural techniques, such as vegetated areas that collect, treat and infiltrate stormwater and shallow drainage channels that slow runoff and filter it.

9. Old Colony Scrap will apply for coverage under the NPDES MSGP on or before January 15, 2016. Old Colony Scrap will apply for coverage under the MSGP by submitting a complete and accurate Notice of Intent (“NOI”) to the EPA and shall send a copy of the NOI to CLF concurrently as it is provided to EPA. Old Colony Scrap’s NOI shall include a URL linking to the online electronic copy of the Facility’s SWPPP.

III. MONITORING PROGRAM

10. Old Colony Scrap will sample its stormwater accumulations for pollutants identified in the MSGP for Sector N (i.e., chemical oxygen demand, total suspended solids, aluminum, copper, iron, lead, and zinc) five (5) times during the first six (6) months after its SWPPP is completed. These inspections must be performed pursuant to the requirements of Part 4.1 of the MSGP and include, at a minimum, all areas where waste is generated, received, stored, treated, or disposed and that are exposed to either precipitation or stormwater runoff. Old Colony Scrap may report this sampling as part of the stormwater monitoring required by the MSGP. Old Colony Scrap will send a copy of each inspection and/or sampling result to CLF no later than three (3) days after receipt.

11. After completing the sampling required by paragraph 11 above, Old Colony Scrap will commence monitoring four (4) times per year at all outfalls discharging industrial stormwater from the Facility for pollutants identified in the MSGP for the scrap recycling sector (i.e., chemical oxygen demand, total suspended solids, aluminum, copper, iron, lead, and zinc). The inspections must be performed pursuant to the requirements of Part 4.1 of the MSGP and include, at a minimum, all areas where waste is generated, received, stored, treated, or disposed or and that are exposed to either precipitation or stormwater runoff. Old Colony Scrap will send a copy of each inspection and/or sampling result to CLF no later than three (3) days after receipt.

12. Old Colony Scrap will also comply with all other inspection and monitoring requirements of the MSGP including, but not limited to, those of Part 4. Old Colony Scrap will send a copy of each inspection and/or sampling result to CLF no later than three (3) days after receipt.

13. Old Colony Scrap may take additional samples of its stormwater discharges. If it does so, Old Colony Scrap will send a copy of each such inspection and/or sampling result to CLF no later than three (3) days after receipt.

14. During the first year after the Effective Date of this Decree, Old Colony Scrap shall implement control measures as necessary to meet the MSGP Part 8.N benchmark levels for chemical oxygen demand, total suspended solids, aluminum, copper, iron, lead, and zinc pursuant to MSGP Part 3.1. If, after the end of one year from the Effective Date of this Decree, Old Colony Scrap's quarterly monitoring results for any parameter exceed MSGP Part 8.N benchmark levels, Old Colony Scrap agrees to pay stipulated additional Supplemental Environmental Project payments as set forth in Paragraph 19 of this Decree.

15. During the term of this Decree, CLF, through representatives, may conduct up to four (4) yearly site inspections at the Facility. The site inspections shall occur during normal business hours and upon forty-eight (48) hours prior notice. During the site inspections, CLF representatives may collect water and soil samples and take photos at the Facility. Any such samples shall be split samples with one of the split samples remaining in the possession of Old Colony Scrap.

16. During the term of this Decree, Old Colony Scrap shall copy CLF on all documents related to water quality or environmental compliance regarding the Facility submitted to any government agency including, but not limited to, the EPA, the Massachusetts Department of Environmental Protection (DEP), and the City of Taunton. Such documents shall be provided to CLF concurrently as they are sent to the agencies and/or municipality.

IV. SUPPLEMENTAL ENVIRONMENTAL PROJECT

17. Within three years of the entry by the Court of this Decree, Old Colony Scrap shall make a Supplemental Environmental Project ("SEP") payment of thirty thousand dollars (\$30,000) to the Taunton River Watershed Alliance for environmental restoration of or other benefit to the Taunton River, including tributaries to the Taunton River. Old Colony Scrap shall notify CLF in writing when the payment is made and provide a copy of the check. The SEP payment shall be according to the following schedule:

- a. \$10,000 within one year of the entry by the Court of this Decree
- b. \$10,000 within two years of the entry by the Court of this Decree
- c. \$10,000 within three years of the entry by the Court of this Decree

18. For each exceedance of an MSGP benchmark as described in Paragraph 15 of the Decree, above, Old Colony Scrap will make an additional SEP payment to the Taunton River Watershed Alliance in the amount of one thousand dollars (\$1,000) for environmental restoration of or other benefit to the Taunton River, including tributaries to the Taunton River. Payment of each such additional amount shall be due fourteen (14) days following each exceedance. Old Colony Scrap shall notify CLF in writing concurrently each time a payment is made and provide a copy of each check.

19. For each missed deadline included in this Decree, including but not limited to failures to timely conduct quarterly benchmark monitoring and inspections pursuant to Parts 4 and 6 of the MSGP, Old Colony Scrap will make an additional SEP payment to the Taunton River Watershed Alliance in the amount of one thousand dollars (\$1,000) for environmental restoration of or other benefit to the Taunton River, including tributaries to the Taunton River. Payment of each such additional amount shall be due fourteen (14) days following each missed deadline. Old Colony Scrap shall notify CLF in writing concurrently each time a payment is made and provide a copy of each check.

20. None of the SEP payments shall be dispersed to CLF.

V. LIQUIDATED ATTORNEY FEES AND COSTS

21. Within ten days of the entry by the Court of this Decree, or in any event prior to November 16, 2015, Old Colony Scrap shall pay to CLF a sum of twenty-five thousand dollars (\$25,000), as full and complete satisfaction of CLF's claim for attorneys' fees and costs incurred in this matter, including CLF's reasonable anticipated costs incurred in conducting site inspections and other compliance monitoring.

22. In the event that any payment owed by Old Colony Scrap under the Decree is not made on or before the due date, Old Colony Scrap shall be deemed in default of its obligations under the Decree. In addition to a continued requirement to make said payment, Old Colony Scrap will pay to CLF liquidated attorney fees of five hundred dollars (\$500) for every day that a payment is late.

VI. EFFECT OF DECREE

23. CLF covenants not to sue and releases Old Colony Scrap (and its parent corporations, subsidiaries, officers, directors, shareholders, employees, agents, and consultants) from any and all claims, causes of action, or liability under Section 505 of the Clean Water Act, 33 U.S.C. § 1365 for damages, penalties, fines, injunctive relief, or any other claim or relief (i) relating to or resulting from noncompliance with the MSGP at the Facility occurring prior to the date the Court enters this Decree or (ii) for any past violations alleged in the Complaint.

24. Old Colony Scrap releases and discharges CLF, its representatives, assigns, agents, employees, officers, and attorneys, including those who have held positions in the past from any and all claims, liability, demands, penalties, costs, and causes of action of every nature which concern or are connected with this action.

25. Neither this Decree, nor terms thereof, nor performance of the terms thereunder by Old Colony Scrap shall constitute or be construed as an admission or acknowledgment by Old Colony Scrap of the factual or legal assertions contained in this Decree or in CLF's Complaint, and Old Colony Scrap retains the right to controvert in any subsequent proceedings, other than proceedings for the purpose of implementing or enforcing this Decree, the validity of the facts or determinations contained in this Decree or the Complaint. Neither this Decree, nor terms thereof, nor performance of the terms thereunder, shall constitute or be construed as an admission or acknowledgment by Old Colony Scrap of any liability, or an admission of violation of any law, by Old Colony Scrap or by its officers, directors, employees, agents, successors, or assigns.

26. CLF does not, by consent to the Decree, warrant or aver in any manner that Old Colony Scrap's compliance with this Decree will constitute or result in compliance with federal or state law or regulation. Nothing in this Decree shall be construed to affect or limit in any way the obligation of Old Colony Scrap to comply with all federal, state, and local laws and regulations governing any activity required by this Decree.

VII. REVIEW AND TERM OF DECREE

27. The Parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), this Consent Decree cannot be entered until forty-five (45) days after the receipt of a copy of the proposed Consent Decree by the United States Attorney General and the EPA. Therefore, upon signing of this decree by the Parties, CLF shall serve copies of this Decree upon the EPA Administrator, the Regional EPA Administrator, and the Attorney General for review, as required by 40 C.F.R. § 135.5.

28. Upon the expiration of the forty-five-day review period provided by 33 U.S.C. § 1365(c)(3), the Parties will jointly move the Court for entry of this Decree. This Decree shall take effect on the date it is entered by this Court and shall terminate five (5) years from when it is entered by the Court. If for any reason the Court should decline to approve this Decree in the form presented, the Parties agree to continue negotiations in good faith in an attempt to cure any objection raised by the Court to entry of this Decree.

VIII. MODIFICATION AND ENFORCEMENT OF DECREE

29. This Decree may be modified only upon written consent of the Parties and the approval of the Court.

30. This Court shall retain jurisdiction over this matter and allow this action to be reopened for the purpose of enabling the Parties to this Decree to apply to the Court for any further order that may be necessary to construe, carry out, enforce compliance and/or resolve any dispute regarding the terms or conditions of this Decree.

IX. MISCELLANEOUS PROVISIONS

31. This Decree shall remain in effect if Old Colony Scrap relocates the Facility to a different location.

32. Sections I, IV, V, VI, VII, and VIII of this Decree shall remain in effect if Old Colony Scrap ceases to be the operator of the Facility, regardless of whether the Facility continues to operate or not.

33. All payments pursuant to this Decree shall be made in form of a certified bank check.

34. Authorization. Each person signing this Decree represents and warrants that s/he has been duly authorized to enter into this Decree by the Party on whose behalf it is indicated that the person is signing.

35. Entire Agreement. This Decree constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence, communications, agreements and understandings, whether oral or written, among the Parties.

36. Notices. Any notice, demand, copies of documents and other communications required to be made under the provisions of this Decree (collectively, "Notices") by any Party hereto shall be effective only if in writing and (a) emailed, (b) personally served, (c) mailed by United States registered or certified mail, return receipt requested, postage prepaid, or (d) sent by a nationally recognized courier service (i.e., Federal Express) for next-day delivery, to be confirmed in writing by such courier. Notices shall be directed to the Parties at their respective addresses set forth below. Notices given in the foregoing manner shall be deemed given when (a) sent via email, (b) actually received or refused by the party to whom sent if delivered by courier, or (c) if mailed, on the day of actual delivery as shown by the addressee's registered or certified mail receipt or at the expiration of three (3) business days after the date of mailing, whichever first occurs.

Notices for Plaintiff shall be sent to:

Zachary K. Griefen, Esq.
Conservation Law Foundation
15 East State Street, Suite 4
Montpelier, VT 05602
zgriefen@clf.org

Notices for Old Colony Scrap shall be sent to:

James P. Connors, Esq.
3291 Main Street, P.O. Box 557
Barnstable, MA 02630
jpconnorsatty@gmail.com

Each Party shall promptly notify the other Party of any change in the above-listed contact information by using the procedures set forth in this paragraph.

37. Successors and Assigns. This Decree shall be binding upon and inure to the benefit of the Parties and their respective representatives, heirs, executors, administrators, successors, officers, directors, agents, attorneys, employees and permitted assigns.

38. Interpretation. The provisions contained herein shall not be construed in favor of or against any Party because that party or its counsel drafted this Decree, but shall be construed as if all Parties prepared this Decree, and any rules of construction to the contrary are hereby specifically waived. The terms of this Decree were negotiated at arm's length by the Parties hereto.

39. Headings. The section and paragraph headings contained in this Decree are for reference purposes only and shall not affect in any way the meaning or interpretation of this Decree.

40. Counterparts. Facsimile, electronic and scanned signatures shall be deemed to be originals for all purposes. Copies of the original Agreement, whether transmitted by facsimile or other means, shall be effective. This Agreement may be signed in counterparts.

41. Severability. In the event that any of the provisions of this Decree are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

CONSERVATION LAW FOUNDATION, INC.

By: _____ Date: _____

Christopher M. Kilian, VP and Director
Conservation Law Foundation
15 East State Street, Suite 4
Montpelier, VT 05602
(802) 223-5992 x4011
ckilian@clf.org

OLD COLONY SCRAP INC.

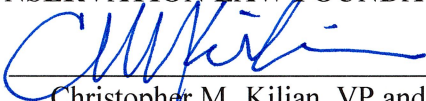
By: _____ Date: 9/2/15

Sean Moore, President
Old Colony Scrap, Inc.
114 Vernon Street
Middleboro, MA 02346

ENTERED and DATED this ____ day of _____, 2015

Honorable
United States District Judge

CONSERVATION LAW FOUNDATION, INC.

By:  Date: 9/3/15
Christopher M. Kilian, VP and Director
Conservation Law Foundation
15 East State Street, Suite 4
Montpelier, VT 05602
(802) 223-5992 x4011
ckilian@clf.org

OLD COLONY SCRAP INC.

By: _____ Date: _____
Sean Moore, President
Old Colony Scrap, Inc.
114 Vernon Street
Middleboro, MA 02346

ENTERED and DATED this ____ day of _____, 2015

Honorable
United States District Judge